

Federal Personnel Manual System

FPM Bulletin

Bulletin No. 550-68

Washington, D. C. 20415

June 21, 1989

SUBJECT: Severance Pay

Heads of Departments and Independent Establishments:

An Information Notice on Changes to Federal Personnel Regulations Is Attached to This Bulletin
This Notice Must Be Posted in a Prominent Place

1. The Director of the Office of Personnel Management (OPM) is required to take steps to ensure that OPM regulations that apply to individuals or organizations outside OPM are posted in offices of Federal agencies maintaining copies of Federal personnel regulations [5 USC 1103(b)(2)(A)].
2. To carry out this responsibility, OPM issued regulations under Part 110 of 5 CFR that require agencies to (a) make available for review on request the regulatory material that appears as attachment 1 to this bulletin; and (b) complete and post the notice (attachment 2) in a prominent place.
3. Completion of the notice requires insertion of the room number where the regulations are available for review.
4. Individuals who wish to make comments on regulations or notices should address them to the OPM official whose mailing address is listed on the reprint of *Federal Register* material in attachment 1 of this bulletin.
5. The public comment period on proposed regulations begins when they are published in the *Federal Register* or made available for public inspection at the Office of the Federal Register in Washington, D.C. Sometimes delays in distribution may result in posting notices on proposed regulations being received at agency field offices near the end of the comment period of a regulation. In other cases, the attached posting notice may convey information about a final regulation and no comments will be sought. In either case, the attached notice must still be posted. The purpose of the material is to provide notice rather than to solicit comment.
6. There is no maximum number of days that the attached notice must remain posted; each agency or office is free to make this determination. However, we suggest 10 working days as a minimum. The basic requirement is that there be sufficient opportunity for interested individuals to receive adequate notice of changes in the Federal personnel regulations.



Constance Horner
Constance Horner
Director

Attachments (2)

Inquiries: Personnel Systems and Oversight Group, Pay and Performance Management,
Pay and Leave Administration Division (202) 632-5056

Code: 550, Pay Administration (General)

Distribution: Basic FPM and FPM Supplement 990-2

Bulletin Expires: July 20, 1990

Proposed Rules

Federal Register

Vol. 54, No. 103

Wednesday, May 31, 1989

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 550

RIN 3206-AC41

Pay Administration (General); Severance Pay

AGENCY: Office of Personnel
Management.

ACTION: Proposed rulemaking.

SUMMARY: The Office of Personnel Management (OPM) is proposing regulations to change the conditions under which Federal employees are entitled to severance pay when they are involuntarily separated from Federal service. Several events have made it desirable to propose changes in our severance pay regulations: (1) Privatization is a major initiative designed to reduce deficit spending and to restore the Federal Government to its appropriate role in the marketplace. To promote this initiative and to facilitate the transfer of Federal employees to private contractors, we are proposing a change in the severance pay regulations that would permit a separated employee to receive severance pay when he or she separates and accepts employment from the contractor assuming the Federal function that resulted in the employee's separation; (2) The Omnibus Budget Reconciliation Act of 1982 changed the conditions under which employees can receive discontinued service retirement annuity. To reestablish the parallel between discontinued service retirement and severance pay, we are proposing to apply like eligibility requirements (with one or two exceptions) to these two separate benefits; (3) Recent court decisions require a change related to employees involuntarily separated from temporary appointments that follow permanent appointments.

DATE: Comments must be received on or before July 31, 1989.

ADDRESS: Send or deliver written comments to Barry E. Shapiro, Deputy

Assistant Director for Pay Programs,
Personnel Systems and Oversight
Group, Office of Personnel Management,
Room 3353, 1900 E Street NW,
Washington, DC 20415.

FOR FURTHER INFORMATION CONTACT:
Jan B. Karicher, (202) 632-5056.

SUPPLEMENTARY INFORMATION:

Severance pay provides financial assistance to Federal employees who are involuntarily separated without eligibility for immediate retirement benefits. This pay is intended to be a form of temporary financial insurance, not an extension of the Federal career or of the full financial rewards of that career. (In addition to receiving severance pay, separated employees who had life insurance and health benefits coverage before separation can continue these without charge for 31 days after their separation. After 31 days, employees have the option of converting Federal coverage to private coverage. They may do this regardless of their physical condition at the time of conversion and without any waiting periods or restrictions for pre-existing medical conditions.)

Our proposed regulations would make the following major changes in the severance pay provisions:

(1) *Privatization.* In 1967 the severance pay regulations were revised in a manner that prohibits the payment of severance pay to an employee who is involuntarily separated due to contracting out of a Federal function if the employee (1) accepts or declines a reasonable offer of employment with the contractor made no later than the date of separation, or (2) accepts any job with the contractor within 90 days of separation. We have become increasingly aware of situations in which qualified separated Federal employees in receipt of severance pay are refusing contract employment until expiration of the 90-day restriction period in order that they may receive their severance pay. As a result, contractors who are required to offer contract positions to qualified separated Federal employees often are not able to fully staff the contract operation with qualified employees during the crucial conversion period.

To alleviate this problem, and to make contracting out more attractive to affected Federal employees, OPM is proposing to remove the contract employment restriction appearing in

§ 550.701(b)(6) of Title 5, Code of Federal Regulations, as well as two similar restrictions in paragraphs (b)(5) and (7) of that section, concerning public non-Federal and non-appropriated fund employment. The removal of these restrictions should encourage Federal employees to accept employment offered by private contractors by providing them with an additional financial incentive. This, in turn, should facilitate the smooth transfer of operations to the private sector.

To assist in developing statistical information on the proposed change in contract procedures, we are also proposing a new section of the regulations that would require agencies to keep records of the number of separated employees who receive severance pay each fiscal year, the amount paid, and the total number of separated employees who go to work for the contractors that assume their Federal functions (§ 550.713).

(2) *Eligibility for severance pay.* Prior to 1982, eligibility requirements were the same for severance pay and for discontinued service retirement (DSR) in that employees were eligible unless they declined an offer of Federal employment at the same grade or pay level. However, under Pub. L. 97-253, the eligibility requirements for DSR were changed. Now, employees who are otherwise eligible for DSR cannot receive an annuity if they decline a "reasonable offer of another position." A reasonable offer for DSR is an offer of a position:

(a) In the employee's agency (including an agency to which the employee and the function are transferred in a transfer of functions);

(b) In the employee's commuting area;

(c) Of the same tenure; and

(d) Not more than the equivalent of two grades or pay levels below the employee's current grade or pay level, regardless of whether the employee is eligible for grade or pay retention under 5 CFR Part 536 or some other authority.

At present, employees can receive severance pay if they have not declined an offer of an "equivalent position" with the Federal Government. "Equivalent position" is currently defined in 5 CFR 550.701(b)(2) as "a position of like seniority, tenure, and pay other than a retained rate." Therefore, as a result of the change in law, an offer of a position two grades lower with grade or pay

retention may be a "reasonable offer" for DSR purposes, but not an "equivalent position" for severance pay purposes. To reestablish parallel eligibility criteria, we propose to replace the term "equivalent position" with "reasonable offer." "Reasonable offer" would have the same meaning for severance pay purposes as it has for discontinued service retirement purposes (§ 550.703).

(3) *Severance pay after temporary employment.* Under section 5595(a)(2)(ii) of title 5, United States Code, an employee separated from a temporary appointment can receive severance pay only if the temporary appointment follows a permanent appointment with no more than a 3-day break in service. The current regulations allow temporary employees to receive severance pay only if they are involuntarily separated from a temporary appointment made no more than 3 days after *involuntary* separation from a permanent appointment.

On December 9, 1983, the U.S. Claims Court, in the case of *Sullivan v. United States*, 4 Cl.Ct. 70, ruled that the regulations contradict the law. The court noted specifically that separation from the permanent appointment does not have to be involuntary for the temporary employee to be eligible for severance pay if involuntarily separated from the subsequent temporary appointment. The U.S. Court of Appeals for the Federal Circuit (742 F.2d 628) affirmed the Claims Court ruling on September 6, 1984.

The proposed definition of "qualifying appointment" (§ 550.703) would make the regulations match the law.

(4) *Exclusion of Schedule C and equivalent appointments.* The proposed regulations clarify that the exclusion of Schedule C appointees from severance pay also applies to individuals appointed under equivalent appointments of a confidential or policy determining character, where the incumbent serves at the will of a Federal official. (For example, executive directors of Presidential Advisory Councils, who serve at the will of the chairperson.)

In addition to proposing the major revisions summarized above, we have made several editorial revisions to clarify severance pay entitlements. For example, we have defined "immediate annuity," "inefficiency," "nonqualifying appointment," "qualifying appointment," and "representative rate," and we have changed the order of existing provisions.

E.O. 12291, Federal Regulation

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities, since it applies only to separated Federal employees.

List of Subjects in 5 CFR Part 550

Government employees and Wages.

U.S. Office of Personnel Management.
Constance Horner,
Director.

Accordingly, OPM is proposing to revise Subpart G of Part 550 of Title 5, Code of Federal Regulations, to read as follows:

PART 550—PAY ADMINISTRATION (GENERAL)

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Sec.	
550.701	Introduction.
550.702	Coverage.
550.703	Definitions.
550.704	Eligibility for severance pay.
550.705	Criteria for meeting the requirement for 12 months continuous employment.
550.706	Criteria for meeting the requirement for involuntary separation.
550.707	Computation of severance pay.
550.708	Creditable service.
550.709	Payment of severance pay.
550.710	Suspension of severance pay.
550.711	Termination of severance pay entitlement.
550.712	Reemployment; recredit of service.
550.713	Records.

Authority: 5 U.S.C. 5585; E.O. 11257.

Subpart G—Severance Pay

§ 550.701 Introduction.

This subpart contains regulations of the Office of Personnel Management to implement the provisions of 5 U.S.C. 5595. These regulations authorize severance pay for employees who are involuntarily separated from Federal service and who meet other conditions of eligibility.

§ 550.702 Coverage.

Except as provided in 5 U.S.C. 5595(a)(2)(i) through (viii), this subpart applies to each full-time or part-time employee; that is, an employee with a regularly scheduled tour of duty, who is serving under a qualifying appointment as defined in § 550.703.

§ 550.703 Definitions.

In this subpart:

"Agency" means an agency as defined in 5 U.S.C. 5595(a)(1), except the government of the District of Columbia.

"Commuting area" means the geographic area that normally is considered one area for employment purposes. It includes any population center (or two or more neighboring ones) and the surrounding localities where people live and reasonably can be expected to travel back and forth daily to work.

"Employee" means an employee as defined in 5 U.S.C. 5595(a)(2), except an individual employed by the government of the District of Columbia.

"Immediate annuity" means benefits under a Federal civilian or military retirement system that are payable upon separation or will begin to accrue within 30 days after separation.

"Inefficiency" means unacceptable performance or conduct that leads to a separation under Part 432 or 752 of this chapter or an equivalent procedure.

"Involuntary separation" means a separation initiated by an agency against the employee's will and without his or her consent for reasons other than inefficiency.

"Nonqualifying appointment" means any appointment with an intermittent work schedule, and the following appointments regardless of work schedule:

- (a) A Presidential appointment;
- (b) An emergency appointment;
- (c) A limited or noncareer executive assignment under Part 305 of this chapter or the equivalent;
- (d) An excepted appointment under Schedule C or an equivalent appointment made for similar purposes;
- (e) A temporary appointment pending establishment of a register (TAPER);
- (f) An overseas limited appointment with a time limitation, unless it is effected within 3 calendar days of separation from a qualifying appointment;

(g) A noncareer, limited term, or limited emergency appointment in the Senior Executive Service as defined in 5 U.S.C. 3132(a) or an equivalent appointment made for similar purposes, unless it is effected within 3 calendar days of separation from a qualifying appointment; and

(h) A time-limited appointment that takes effect more than 3 calendar days after the end of one or more qualifying appointments.

"Qualifying appointment" means—

- (a) A career or career-conditional appointment in the competitive service or the equivalent in the excepted service;

(b) An excepted appointment without time limitation, except under Schedule C;

(c) An overseas limited appointment without time limitation;

(d) A status quo appointment, including one that becomes indefinite when the employee is promoted, demoted, or reassigned;

(e) A time-limited appointment in the Foreign Service, when the employee was assigned under a statutory authority that carried entitlement to reemployment in the same agency, but this right of reemployment has expired;

(f) An appointment under the Executive Assignment System with career or career conditional tenure;

(g) A career appointment in the Senior Executive Service; or

(h) A time-limited appointment that takes effect within 3 calendar days after the end of one or more of the qualifying appointments listed in paragraphs (a) through (g), of this section.

"Rate of basic pay" means the rate of pay fixed by law or administrative action for the position held by an employee, including annual premium pay for standby duty under 5 U.S.C. 5545(c)(1) and night differential for prevailing rate employees under 5 U.S.C. 5343(f), but not including additional pay of any other kind.

"Reasonable offer" means the offer of a position that meets all the following conditions:

(a) The offer is in writing;

(b) The employee meets established qualification requirements; and

(c) The offered position is—

(1) In the employee's agency, including an agency to which the employee is transferred with his or her function in a transfer of functions between agencies;

(2) Within the employee's commuting area, unless geographic mobility was a condition of employment;

(3) Of the same tenure and work schedule (that is, part-time or full-time); and

(4) Not lower than two grades or pay levels below the employee's current grade or pay level, without consideration of grade or pay retention under Part 536 of this chapter or other authority. In movements between pay schedules or pay systems, the representative rate of the offered position must not be lower than that of the grade or pay level that is two grades below the current position on the same pay schedule as the current position.

"Representative rate" means the fourth rate of the grade of a position under the General Schedule, including the fourth rate of the corresponding grade of the General Schedule in the

case of a position under the Performance Management and Recognition System established by chapter 54 of title 5, United States Code; the single rate for GS-18; the employee's rate under the Senior Executive Service; or the rate designated as representative of the position by the agency responsible for establishing and adjusting the schedule.

"Severance pay fund" means the total severance pay to which an employee is entitled during a single entitlement under 5 U.S.C. 5595. It includes a basic severance pay allowance and, where applicable, an age adjustment allowance, as computed under § 550.707.

§ 550.704 Eligibility for severance pay.

(a) To be eligible for severance pay, an employee must—

(1) Be serving under a qualifying appointment;

(2) Have completed at least 12 months continuous service, as described in § 550.705; and

(3) Be removed from Federal service by involuntary separation.

(b) An employee is not eligible for severance pay if he or she—

(1) Is serving under a nonqualifying appointment;

(2) Declines a reasonable offer;

(3) Accepted a qualifying appointment in an agency scheduled by law or Executive order to be terminated within less than 1 year from the date of the appointment, unless on the date of separation the termination has been postponed to a date more than 1 year after the date of the appointment;

(4) Is receiving injury compensation under subchapter I of chapter 81 of title 5, United States Code, unless the compensation is being received concurrently with pay or is the result of someone else's death; or

(5) Is eligible upon separation for an immediate annuity from a Federal civilian retirement system or from the uniformed services. Such an employee is ineligible even if all or part of the annuity is offset by payments from a non-Federal retirement system the employee elected instead of Federal civilian retirement benefits or disability benefits received from the Veterans Administration.

§ 550.705 Criteria for meeting the requirement for 12 months continuous employment.

(a) The requirement for 12 months continuous employment is met if, on the date of separation, an employee has held one or more civilian Federal positions over a period of 12 months without a single break in service of more

than 3 calendar days. The positions held must have been under—

(1) One or more qualifying appointments; or

(2) One or more non-qualifying temporary appointments that precede the current qualifying appointment.

(b) When a break in service that is covered by severance pay interrupts otherwise continuous Federal employment, the entire period is considered continuous service.

(c) The period during which an employee receives continuation of pay or compensation for an injury on the job under chapter 81 of title 5, United States Code, is considered continuous Federal service.

§ 550.706 Criteria for meeting the requirement for involuntary separation.

(a) Employees who resign because they expect to be involuntarily separated are considered to have been involuntarily separated if they resign after receiving—

(1) Specific written notice that they will be involuntarily separated, and the notice of separation is not cancelled before the resignation is effected; or

(2) A general notice of reduction in force or transfer of function that announces that all positions in the competitive area will be abolished or transferred to another commuting area.

(b) Except for resignations under the conditions described in paragraph (a) of this section, all resignations are voluntary separations and do not carry entitlement to severance pay.

§ 550.707 Computation of severance pay.

(a) *Basic severance pay allowance.* Except as provided in paragraph (b) of this section, the basic severance pay allowance consists of the following:

(1) One week of pay at the rate of basic pay for the position held by the employee at the time of separation for each full year of creditable service through 10 years;

(2) Two weeks of pay at the rate of basic pay for the position held by the employee at the time of separation for each full year of creditable service beyond 10 years; and

(3) Twenty-five percent of the otherwise applicable amount for each full 3 months of creditable service beyond the final full year.

(b) *Basic severance pay allowance for employees with variable work schedules or rates of pay.* The basic severance pay allowance is computed on the basis of the average rate of basic pay for the last position held during the 26 biweekly pay periods immediately

preceding separation for an employee in a position—

(1) In which the work schedule regularly varies from full-time to part-time throughout the year;

(2) In which the rate of annual premium pay for standby duty varies throughout the year; or

(3) Under a prevailing rate schedule in which the work schedule regularly alternates between a day shift and a night shift throughout the year.

(c) *Age adjustment allowance.* The basic severance pay allowance is augmented by an age adjustment allowance consisting of 2.5 percent of the basic severance pay allowance for each full 3 months of age over forty years.

§ 550.708 Creditable service.

The following types of service are creditable for computing an employee's severance pay under § 550.707:

(a) Civilian service performed by an employee;

(b) Service performed with the United States Postal Service or the Postal Rate Commission; and

(c) Military service, including active or inactive training with the National Guard, when performed by an employee who returns to civilian service through the exercise of a restoration right provided by law, Executive order, or regulation.

§ 550.709 Payment of severance pay.

(a) Each severance payment must be equal to the employee's rate of basic pay, less taxes and Medicare, and, when appropriate, contributions under the Federal Insurance Contributions Act (FICA). Payment must be made at the same pay period intervals salary would be paid if the employee were still employed. The final payment may be a partial payment consisting of that portion of the severance pay fund remaining from the employee's immediate entitlement or the balance of the 52-week lifetime limitation.

(b) When an employee receives severance pay as the result of separation from a qualifying temporary appointment (that is, a temporary appointment effected within 3 days of separation from a qualifying permanent appointment), severance pay will be paid in an amount equal to the rate of basic pay received at the time of separation from the qualifying temporary appointment.

(c) When an employee is in a nonpay status immediately before separation, basic pay is the pay the employee would have received if he or she had been in a pay status when separated.

§ 550.710 Suspension of severance pay.

(a) When an individual receiving severance pay is given one or more nonqualifying temporary appointments, the severance pay is suspended on the day of the appointment. Severance pay begins again when the employee separates from the nonqualifying temporary appointment.

(b) When an individual is given a temporary appointment before severance payments begin, the severance payments do not begin until the employee is separated from the temporary appointment.

(c) When a seasonal employee is hired under a temporary appointment, severance pay is suspended. Severance payments begin again after separation from the temporary appointment.

§ 550.711 Termination of severance pay entitlement.

Entitlement to severance pay ends when—

(a) An employee is appointed to the Federal Government under a qualifying appointment;

(b) The severance pay fund is exhausted; or

(c) The employee has received 52 weeks of severance pay.

§ 550.712 Reemployment; recredit of service.

(a) When a former employee is reemployed, the employing agency shall record on the appointment document the number of weeks of severance pay received (including partial weeks).

(b) If an employee again becomes entitled to severance pay, the agency in which entitlement arises shall compute the severance pay allowance on the basis of all creditable service and current age and deduct from the number of weeks it would take to exhaust the allowance the number of weeks for which severance pay previously was received.

§ 550.713 Records.

Agencies shall maintain records, by fiscal year, of the number of employees who receive severance pay and the total amount of severance pay paid. When entitlement to severance pay arises as the result of contracting a Federal function to a private contractor, the affected agency also shall record the number of separated employees who go to work for the contractor within 90 days of the effective date of the contract. The Office of Personnel Management may require agencies to report such information to the Office.

[FR Doc. 89-12864 Filed 5-30-89; 8:45 am]

BILLING CODE 6325-01-M



United States
Office of
Personnel
Management

Notice of Proposed Changes to Title 5 of the Code of Federal Regulations

The Office of Personnel Management has issued proposed regulations on severance pay.

These regulations would accomplish the following:

- (1) Eliminate the requirement that employees have to be involuntarily separated from a permanent appointment before receiving a temporary appointment to be eligible for severance pay upon involuntary separation from a temporary appointment.
- (2) Eliminate the current restrictions that prohibit the payment of severance pay to employees who accept comparable employment with a contractor, public non-Federal organization, or non-appropriated fund instrumentality at the time one of these organizations assumes a Federal function, or who accepts any employment with one of these organizations within 90 days of the transfer date.
- (3) Replace the term and definition of "equivalent position" with that of "reasonable offer" to bring eligibility requirements for severance pay in line with those for discontinued service retirement.

You can review a copy of the complete text of the regulations in the room shown below. The U.S. Office of Personnel Management would like to hear any comments you may have. Please send them to arrive by the date shown below to the address indicated.

Location of complete text:		Send comments to: Barbara L. Fiss, Assistant Director for Pay and Performance Management, Personnel Systems and Oversight Group, Office of Personnel Management, Room 7H28, 1900 E Street, N.W. Washington, DC 20415
Notice expires:	Date comments to arrive: 7/31/89	

The Director of the Office of Personnel Management (OPM) is required to take steps to ensure that OPM regulations which apply to individuals or organizations outside OPM are posted in Federal agencies maintaining copies of the Federal personnel regulations [5 USC 1103(b)(2)(A)]. This notice, which should be posted in a prominent place, carries out that regulation.



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